XII-189 (Jail) C J.P.R./9-94

CF0000061345

CrA 1924/97 (2)

Division Bench (Criminal)

APPEAL OF PRISONER

No 283/55 Name Shambhu Singh

Father's name Sarvan Singh

Residence At- Sonsari, P/s- Pali Th- Kotghora, Distt- Bilaspur Age 45 Age Yrs

Sentenced to Life imprisonment on 31.7.97

Under Section 302 I.P.C. by IInd A.D.J. Bilaspur (M.P.)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received 31.7.97

3 Date on which Appeal sent 7/8/97 16/8/97

4 Whether the prisoner wishes to be represented or not Yes

No 288/55 Name Shambhu Singh S/o Sarvan Singh

Confined in District Jail Bilaspur

No. 254/October Dated 7/8/97 199

Forwarded to the Registrar, High Court of M.P. Jabalpur

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

नायब कारागाराधिकारी
जिला जेल बिलासपुर (म.प्र.)

Superintendent
जिला जेल बिलासपुर
Jail

Date of receipt in Office

Date of receipt of record to accompany the Memo of Appeal to the Appellate court

High Court of Madhya Pradesh
JABALPUR
Rec'd on 21 AUG 1997
Registration No. 608
Receipt Clerk
High Court, Jabalpur

No Dated 199

Forwarded to the

Date of receipt in Appellate court

(P. T. O.)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1924 OF 1997

APPELLANT : Shambhu Singh

Vs.

RESPONDENT : State of Madhya Pradesh

DIVISION BENCH: **HON'BLE SHRI L.C. BHADOO &**
HON'BLE SHRI SATISH K. AGNIHOTRI, JJ

Present:
Shri Ashok Verma, learned counsel for the appellant.
Shri U.N.S. Deo, learned G.A. for the State/respondent.

ORAL JUDGMENT
(Delivered on 18th July 2006)

PER L.C. BHADOO, J

By this appeal under Section 374(2) of the Code of Criminal Procedure sent through Superintendent, District Jail, Bilaspur, accused/appellant Shambhu Singh has questioned the legality and correctness of his conviction and sentence under Section 302 of the Indian Penal Code passed by the learned Second Additional Sessions Judge, Bilaspur in Sessions Trial No. 69/97 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, has sentenced him to undergo imprisonment for life.

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Brief facts leading to filing of this appeal are that on the fateful day i.e. 27.11.1996 in the morning accused/appellant Shambhu Singh along with his wife Shyambai left for the forest for collecting wood. Deceased Shyambai was wearing a red colour sari whereas accused was wearing Dhoti and slippers and was carrying axe. When the accused and the deceased did not return in the evening, in the next morning Itwar Singh (PW-4), Ganesh (PW-2) along with sons of the accused and the deceased went in search of them, when they went towards the hillock, they saw that the accused was sitting on the hillock and after seeing them he ran away. Thereafter, Ashok Singh (PW-5), son of the accused and the deceased, saw that his mother's body was lying there and the accused had left his slippers, axe and rope at the place of occurrence, on which Ashok Singh went to the Police Station – Pali and lodged the report Ex.P/11 at the police station. PW-9 Shri K.L.Yadav, Assistant Sub Inspector, P.S.-Pali, took up the investigation. He left for the scene of occurrence and after giving notice (Ex.P-3) to the Panchas, he prepared the Panchanama of the dead body (Ex.P-1) on 29.11.1996. He took into possession the slippers of the accused and the rope under Ex.P/2. He also prepared Panchanama of the spot Ex.P/4. Merg intimation was recorded under Ex.P-5. Body of the deceased Shyambai was sent for postmortem examination to Primary Health Centre, Pali under Ex.P-6 where Dr. Pradeep Agrawal (PW-8) conducted the postmortem on the dead body and prepared the postmortem report Ex.P-7 in which he opined that the death is due to asphyxia as a result of throttling. The site plan (Ex.P-9) was prepared by the Investigating Officer. Dehati Nalishi (Ex.P-10) was sent by the Investigating Officer to the Police Station – Pali where First

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Information Report (Ex.P-11) was registered. During the investigation the accused was arrested on 02.12.1996 at about 7.00 p.m. under Ex.P-14. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Katghora who in turn committed the case to the Court of Sessions Judge, Bilaspur from where learned Second Additional Sessions Judge received the case on transfer for trial.

3. During trial the prosecution examined nine witnesses in order to establish the charge against the accused/appellant. On the other hand, statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he admitted the death of his wife and also admitted that he along with the deceased had gone to the forest to collect wood. He has also admitted the fact that he was wearing slippers, carrying axe and his wife was wearing a red colour sari. The accused was asked about the fact that when he along with his wife did not return in the evening, his sons Santosh (PW-1), Ashok Singh (PW-5) and Itwar Singh (PW-4) went in search of them, he replied that he does not know. Thereafter, in his statement either he denied the prosecution evidence or stated that he does not know and in the last he has stated that he is innocent and has been falsely implicated in the crime.

4. Learned Additional Sessions Judge after hearing the counsel for the accused and Additional Public Prosecutor for the State, convicted and sentenced the accused as mentioned in paragraph-1 of this judgment.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. We have heard Shri Ashok Verma, learned counsel appointed by the High Court Legal Aid Committee on behalf of the accused/appellant and Shri U.N.S.Deo, learned G.A. for the State/respondent.

6. As far as homicidal death of deceased Shyambai is concerned, Dr. Pradeep Agrawal (PW-8) has stated that on 30.11.1996 he conducted postmortem on the body of deceased Shyambai and noticed abrasions on her neck and opined that the cause of death was asphyxia due to throttling and his report is Ex.P-7. Learned counsel for the appellant has not disputed the fact that the death of Shyambai was homicidal in nature, therefore from the evidence of the doctor it is established that the death of Shyambai was homicidal in nature.

7. Now coming to the question of involvement of the accused/appellant in committing the murder of his wife Shyambai, the conviction of the accused/appellant rests on the circumstantial evidence as there is no ocular evidence available on record. The circumstances relied upon by the trial Court to convict the appellant are as follows:

(i) that extra judicial confession was made by the accused/appellant before PW-6 Balwant;

(ii) that the accused and the deceased were last seen together when she was alive and on the next morning the accused was found sitting near the dead body;

(iii) that the accused after seeing his sons and his elder brother ran away immediately when they reached the place of occurrence

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. In order to rest the conviction based on the circumstantial evidence as per the settled law and as has been held by the Hon'ble Apex Court in the matter of **Nesar Ahmad Vs. State of Bihar** reported in **AIR 2001 S.C. 2416** i.e. in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point towards the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

9. As far as the first circumstance that the accused made extra judicial confession before PW-6 Balwant is concerned, the evidence of this witness does not inspire full confidence of the Court for the reason that in the first instance in examination in chief he has stated that the accused did not disclose to him anything about the death of the deceased, however, on cross examination by Additional Public Prosecutor he has stated that it is correct to say that when the accused met him he disclosed to him that on account of anger he pressed the neck of his wife. This witness in his cross examination has further stated that it is incorrect to say that the accused disclosed the above fact to him and he is saying so at the instance of the police. Therefore, the evidence of this witness is wavering and it is not safe to place reliance on his evidence and as such the prosecution has not been able to establish this circumstance that the accused made extra judicial confession before this witness.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10. So far as the second circumstance that the accused and deceased were last seen together when the deceased was alive is concerned, PW-1 Santosh Singh, son of the accused and the deceased, has stated that on the fateful day his father and mother left the house to collect wood from the forest and in the evening they did not return, they waited whole night for them. He has further stated that in the next morning he along with his elder brother Ashok Singh, one Ganesh and Itwar Singh, brother of the accused went in search of them in the forest, when they were climbing the hillock he saw his father running away and the place from where he ran away his slippers and axe were lying. At some distance they saw the body of Shyambai which was covered by sari. In the cross examination he has categorically stated that he saw his father running away with his own eyes. PW-6 Balwant has corroborated the evidence of PW-1 Santosh Singh and stated that they all four went in search of the accused and his wife and when they climbed the hillock they saw the dead body of wife of the accused which was covered with the branches of the bush and the accused was sitting under the bush, on seeing them he ran away. They asked him to stop but he did not stop and ran away. Similar is the evidence of PW-4 Itwar Singh, brother of the accused and PW-5 Ashok Singh, son of the accused.

11. Learned counsel for the accused/appellant placing reliance on the judgment of the Hon'ble Apex Court reported in **AIR 1971 S.C. 1050** in the matter of **Matru alias Girish Chandra Vs. The State of U.P.**, argued that mere absconding of an accused cannot be the basis of conviction as there is every chance that the accused might have absconded out of fear. He further argued that the prosecution has not been able to establish the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 7 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

motive behind the crime and there is no evidence on record to show that at any point of time the accused and the deceased were having strained relations. In support of his contention learned counsel for the accused/appellant also places reliance on the judgment of the M.P. High Court reported in **2006 Cri.L.J. 1506** in the matter of **Kalu s/o Roop Singh Patelia Vs. State of Madhya Pradesh**.

12. Further placing reliance on the judgment of the Hon'ble Supreme Court reported in **1991 Cri. L. J. 2191** in the matter of **Inderjit Singh and another Vs. Sfate of Punjab** learned counsel for the accused/appellant contended that when there was no enmity between the accused and the deceased, conviction cannot be based merely on the circumstance that the deceased was last seen in company of the accused.

13. On the other hand, learned counsel for the State/respondent supported the impugned judgment of the trial Court.

14. We have considered the arguments advanced by learned counsel for the parties and the judgments cited by learned counsel for the accused/appellant in support of his contentions.

15. As far as the judgment in the matter of Matru alias Girish Chandra (supra) is concerned, in paragraph – 15 of that judgment the Hon'ble Apex Court has held that the appellant's conduct in absconding was also relied upon. Now mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime: such is the instinct of self-preservation. The act of absconding is no doubt relevant

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 8 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the Courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. As has been observed by the Apex Court in the above judgment that the act of absconding is no doubt relevant piece of evidence and the same is to be considered along with other evidence, if we look into the present case the evidence adduced by the prosecution against the accused that when his sons and brother went in search of the accused and his wife as they did not return from the forest after collecting wood, they saw the accused sitting on the hillock, the accused immediately after seeing these persons ran away despite being asked not to run away and that thereafter they saw the dead body of Shyambai lying on the spot from where the accused ran away leaving his slippers and the axe there, the circumstance that the accused ran away from the place of occurrence out of fear is not established as in the natural course when he saw his own brother and sons coming towards his side, had he not been involved in this heinous offence, he would have welcomed them and ought to have disclosed them the circumstances under which his wife died. More so, as per the medical evidence the cause of death was asphyxia due to throttling as certain abrasions were found on the neck of the deceased and the accused has not explained as to how his wife received those injuries. Present case is not only of abscondence of the accused but it goes further that the accused was seen near the dead body of his wife, when his brother and sons came in search of them, seeing them he ran away from the place of occurrence and absconded. Therefore, the above authority cited by learned counsel for the accused/appellant is of no help to the accused/appellant.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

16. In the matter of **Bodhraj alias Bodha and others Vs. State of Jammu and Kashmir** reported in **(2002) 8 S.C.C. 45** the Hon'ble Apex Court has held that the theory of last seen comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

17. Similarly, in the judgment of the M.P. High Court in the matter of Kalu s/o Roop Singh Patelia (supra) cited by learned counsel for the accused/appellant, the Court reached to the conclusion that there was no evidence showing that the accused was present on the spot just before or at the time of commission of offence and held that the accused was entitled for benefit of doubt. Therefore, on facts this judgment is also of no help to the accused/appellant.

18. As far as the motive is concerned, it is no doubt that in cases of circumstantial evidence the motive plays a vital role but in all types of cases, mere absence of motive cannot be termed as innocence of the accused particularly when the circumstantial evidence led by the prosecution establishes the involvement of the accused beyond reasonable doubt. Motive always remains in the mind of the accused and it is difficult to know about his mens rea which was working in his mind at the time of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 10 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

commission of crime. The motive is always known to the perpetrator of the crime and may not be known to others. The prosecution is required to prove its case based on the circumstantial evidence. The Court has to satisfy that the chain of circumstantial evidence is so close and complete which leaves no manner of doubt about the involvement of the accused in crime and are not capable of any explanation and the same unerringly points towards the guilt of the accused which is not consistent with the hypothesis of the guilt of the accused.

19. The Hon'ble Apex Court in the matter of **Subedar Tweari Vs. State of U.P. and others** reported in **AIR 1989 S.C. 733** held that evidence regarding existence of motive which operates in the mind of an assassin is very often than not within the reach of others. The motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to the evil thought in the mind of the assassin. A crime can take place even without pre-meditation or preplanning in the context of a particular situation, on the spur of the moment.

20. In the matter of **Suresh Chandra Bahri Vs. State of Bihar** reported in **AIR 1994 S.C. 2420** the Hon'ble Apex Court held that sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the

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offence charged with. But the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime.

21. In the matter of **Dhananjoy Chatterjee Vs. State of West Bengal** reported in **1994 (2) S.C.C. 220** the Hon'ble Apex Court held that in a case based on circumstantial evidence, the existence of motive assumes significance though the absence of motive does not necessarily discredit the prosecution case, if the case stands otherwise established by other conclusive circumstances and the chain of circumstantial evidence is so complete and is consistent only with the hypothesis of the guilt of the accused and inconsistent with the hypothesis of his innocence.

22. Therefore, in view of the above judgments in the matters based on circumstantial evidence if motive is proved then it affords added support to the Court for establishing the offence alleged against the accused and convict him accordingly. Even in the absence of motive, the accused can be convicted on the basis of the circumstantial evidence led by the prosecution if such evidence is clinching and consistent with the guilt of the accused.

23. As has been observed above, in the first instance accused and his wife both went together to the forest to collect wood, thereafter the witnesses i.e. their sons and brother of the accused reached the scene of occurrence where the accused was found sitting by the side of the dead body and when he saw these persons he immediately ran away. Moreover,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -12-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the death of Shyambai has been established to be homicidal in nature, therefore this circumstance points towards the involvement of the accused. Further that the accused remained absconding and he was arrested only on 02nd December 1996 i.e. after five days of the incident which also speaks about the involvement of the accused.

24. Therefore, in view of the above, we are of the considered opinion that there is no illegality or infirmity in the impugned judgment of the trial Court holding the accused/appellant guilty for committing the murder of his wife Shyambai as the circumstantial evidence unerringly point towards the involvement of the accused in crime in question and there was no chance of coming any third person in between for committing the murder of wife of the accused.

25. In the result, the appeal being devoid of merits is liable for dismissal and the same is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Satish K. Agnihotri
Judge

P.T.O.